

From: O'Connell John P. (OMB) [mailto:John.O'Connell@state.de.us]
Sent: Friday, August 15, 2008 11:02 AM
To: Lenstra, Beth [LEGIS]; Stageberg, Paul [DHR]; isabel.gomez@state.mn.us
Cc: Acton, Jennifer [LEGIS]; McEniry, Joseph [LEGIS]; Anderson, Lon [LEGIS]; Ashworth, Tom [LEGIS]; Engel, Cathy [LEGIS]; Patterson, Thomas [LEGIS]
Subject: RE: Sentencing Subcommittee Follow Up Questions

Dear Beth and Joe:

It was great seeing you at the NASC Conference in San Francisco. I hope you found it useful. One thing for sure, is you saw how unique each state is in their approach to sentencing and criminal justice issues.

I apologize for taking so long to respond to your questions. I have been out sick and then catching up, even in the summer, has been uphill.

1. This question seems to go to why states sometimes abolish their parole boards as part of adopting determinate sentencing guidelines. The reason most cited is that eliminating the parole board increases judicial authority and provides for certainty and fairness of punishment. And correctly, this change raises the issue of what happens to post prison supervision.

Early on in Washington State, after a sentencing guideline determinate sentence was completed, a person returned to the community without supervision. This changed incrementally. At first, we wanted post prison supervision for sex offenders and then later for other violent offenders. And later post prison supervision expanded to A, B, C and D levels for most prison releasees. Post prison supervision became part of the Washington State DOC probation caseload.

In Delaware, they wanted to eliminate the Parole Board because they considered only one-third of the potential prison releasees after serving one-third of the offenders sentence. We also had DOC early release credits that allowed for extensive reductions in time. Prior to truth in sentencing we established that a property offender with a 2 year sentence was likely to max out and serve 2 years because he was overlooked by the Parole Board and DOC earned time programs. However a violent offender with a 6 year sentence was more likely to serve only 2 years because of access to parole review and DOC earned time programs. It is easy to see that justice and costs issues had gotten very convoluted and guidelines provided far more certainty. Delaware from the beginning wanted a more organized post prison supervision program. As such, at the time of sentencing the judge sets the "flow down release plan." A typical repeat burglary case would go something like this --- the five year prison term is suspended for 18 months in prison (75% must be served) to be followed by 6 months at work release and 1 year at intensive community supervision with the remainder served at standard probation. As many of these folks violate their post prison probation, the offender can be returned for the remainder of the five year sentence. Most likely an person on post prison supervision the judge will 6 months or so for each violation.

In both Delaware and Washington, DOC provides the post prison supervision and programs. In Delaware the judges determine violation penalties. In Washington State they recently adopted a DOC administratively controlled violation scheme. Separate violation guidelines were developed for Delaware --- as some judges were inclined to increase supervision levels when there was a violation and other judges revoked for the remainder of the original prison term. So in the example above -- the burglar could be released from prison in 14 months given his 18 month sentence -- on a finding of guilt for a revocation with the tough judge the offender would find himself back in prison for the remainder of the 5 year term -- for a more "rehabilitative" judge he would be moved up to home confinement. Even though probation revocations have increased significantly under SENTAC, judges are very good at following the probation violation guidelines.

2. Homes for Sentencing Guideline Commission and Independent Research

The home for sentencing commissions varies by state, but the most part they are independent commissions. Virginia is probably noteworthy because it is a high profile commission housed in the judiciary. But in practice, Virginia's credibility derives from its responsiveness to both the executive and the legislature. The quality and evenhanded approach to analysis and discussions makes them an open part of the criminal justice community and state government. If the Virginia Commission became isolated in its work, my guess is the legislature would make a change.

In Delaware, SENTAC is a free standing committee established by law and court rule and is made up of all segments of the criminal justice community. Also by law the research for SENTAC is conducted independently by my office -- the Delaware Statistical Analysis Center --- very similar to Paul Stageberg's office in Iowa. I am housed in the Executive, but it is very clear that I answer to not only SENTAC but also the Legislative Joint Finance Committee and the Governor. This arrangement speaks to the importance Delaware places on independent analysis.

Many sentencing commissions have their own research units, but others are more like Delaware and Iowa. The truth of the matter is where ever the research and analysis duties are placed, the work must stand the critic of various views and leanings in state government. Also no matter where you place the sentencing research tasks, that group needs ready access to good crime, sentencing, and corrections (local and state) data. Sufficient resource is also important. We are limited to about 2 researchers for SENTAC issues --- so SENTAC, the OMB (state budget office) and the Controller General (legislative budget office) by a law approve of my annual research work plan. Any major changes in assignment during the year must include something being stricken from my work list or with a new task added to the overtime list.

Jack

From: Lenstra, Beth [LEGIS] [mailto:Beth.Lenstra@legis.state.ia.us]

Sent: Wednesday, July 30, 2008 9:48 AM

To: Stageberg, Paul [DHR]; isabel.gomez@state.mn.us; O'Connell John P. (OMB)

Cc: Acton, Jennifer [LEGIS]; McEniry, Joseph [LEGIS]; Lenstra, Beth [LEGIS]; Anderson, Lon [LEGIS]; Ashworth, Tom [LEGIS]; Engel, Cathy [LEGIS]; Patterson, Thomas [LEGIS]

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Paul - are there data to indicate that Iowa has issues in sentencing re fairness, equity, and and certainty? If yes, are there any reports that we can forward to Subcommittee members?

Jack and Isabel -

1 - Parole Board

Iowa has a mix of determinate and indeterminate sentencing. We have a Parole Board that may serve as a release valve for the prison population. However, its primary purpose is to protect public safety by providing a mechanism of gradual release back to the community. The Board conducts its own risk assessment (different than any DOC/CBC risk assessment) in determining who to parole or grant work release. The Board maintains legal jurisdiction - the Board conducts parole and work release revocation proceedings in order to revoke the offender back to prison.

In states that have sentencing commissions and no Parole Board, who maintains jurisdiction over the gradual release with supervision? the DOC, original sentencing courts? Someone else??

2. Sentencing Commission -

1. Where are sentencing commissions housed? Executive, Judicial or Legislative Branches? Housed as independent agencies or as part of the DOC, or a research organization? Feel free to elaborate.

2. As background, Iowa already has a well established fiscal note and correctional impact process in place. The Criminal and Juvenile Justice Planning Division is located in the executive branch and provides independent research to all 3 branches of government, upon request within available funding. State law requires the CJJPD to provide correctional impact statements to the Legislative Services Agency, which is then responsible for issuing the correctional impact/fiscal note on proposed legislation. We follow a similar process as Minnesota, where the note gets revised if the proposed legislation is amended.

Could a sentencing commission be created and housed within CJJPD or LSA? or as a separate and independent entity that is required to collaborate with LSA and CJJPD?

Thanks!!!